

112TH CONGRESS
2D SESSION

H. R. 4175

To amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to provide parity under group health plans and group health insurance coverage for the provision of benefits for prosthetics and custom orthotics and benefits for other medical and surgical services.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2012

Mr. DENT (for himself and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to provide parity under group health plans and group health insurance coverage for the provision of benefits for prosthetics and custom orthotics and benefits for other medical and surgical services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Insurance Fairness
3 for Amputees Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) There are more than 1,700,000 people in
8 the United States living with limb loss, many of
9 whom are appropriate candidates for prosthetic care.
10 A comparable number experience trauma, illness, or
11 disability that results in musculoskeletal or neuro-
12 muscular impairment of the limbs, back, and neck
13 requiring the use of orthotic care.

14 (2) Every year, there are more than 130,000
15 people in the United States who undergo amputation
16 procedures.

17 (3) In addition, United States military per-
18 sonnel serving in Iraq and Afghanistan and around
19 the world have sustained traumatic injuries resulting
20 in amputation and musculoskeletal or neuromuscular
21 injury.

22 (4) The number of amputations in the United
23 States is projected to increase in the years ahead
24 due to the rising incidence of diabetes and other
25 chronic illness.

1 (5) Those experiencing limb loss and limb dys-
2 function can and want to regain their lives as pro-
3 ductive members of society.

4 (6) Prosthetic and orthotic care often enables
5 amputees and others with orthopedic impairments to
6 continue working and living productive lives.

7 (7) Insurance companies have begun to limit re-
8 imbursement of prosthetic and custom orthotic care
9 costs to unrealistic levels and often restrict coverage
10 over an individual's lifetime, which shifts costs onto
11 the Medicare and Medicaid programs.

12 (8) Eighteen States have addressed this prob-
13 lem and have prosthetic or orthotic parity legisla-
14 tion.

15 (9) Prosthetic and orthotic parity legislation
16 has been introduced and is being actively considered
17 in 20 States.

18 (10) The States in which prosthetic or orthotic
19 parity laws have been enacted have found there to
20 be minimal or no increases in insurance premiums
21 and have reduced Medicare and Medicaid costs.

22 (11) Prosthetic or orthotic parity legislation will
23 not add to the size of government or to the costs as-
24 sociated with the Medicare and Medicaid programs.

1 (12) If coverage for prosthetics and custom
2 orthotics are offered by a group health insurance
3 policy, then providing such prosthetic coverage on
4 par with other medical and surgical benefits will not
5 increase the incidence of amputations or the number
6 of individuals for which a prosthetic or custom
7 orthotic device would be medically necessary and ap-
8 propriate.

9 (13) In States where prosthetic or orthotic par-
10 ity legislation has been enacted, amputees and oth-
11 ers with orthopedic impairments are able to return
12 to productive lives, State funds have been saved, and
13 the health insurance industry has continued to pros-
14 per.

15 (14) Prosthetic and orthotic devices and related
16 services allow people to return more quickly to their
17 preexisting work.

18 (15) States have, and should continue to be
19 permitted to, create consumer protections that ex-
20 ceed the Federal floor of protection provided for in
21 this Act.

22 (b) PURPOSE.—It is the purpose of this Act to re-
23 quire that each group health plan that provides medical
24 and surgical benefits and also provides coverage for pros-
25 thetics or custom orthotics (or both), provide such cov-

1 erage under terms and conditions that are no less favor-
2 able than the terms and conditions under which medical
3 and surgical benefits are provided under such plan.

4 **SEC. 3. PROSTHETICS AND CUSTOM ORTHOTICS PARITY.**

5 (a) ERISA.—

6 (1) IN GENERAL.—Subpart B of part 7 of sub-
7 title B of title I of the Employee Retirement Income
8 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
9 amended by adding at the end the following:

10 **“SEC. 716. PROSTHETICS AND CUSTOM ORTHOTICS PARITY.**

11 “(a) IN GENERAL.—In the case of a group health
12 plan (or health insurance coverage offered in connection
13 with a group health plan) that provides medical and sur-
14 gical benefits and also provides benefits for prosthetics or
15 custom orthotics (as defined under paragraphs (1) and (2)
16 of subsection (e)) (or both)—

17 “(1) such benefits for prosthetics or custom
18 orthotics (or both) under the plan (or coverage) shall
19 be provided under terms and conditions that are no
20 less favorable than the terms and conditions applica-
21 ble to substantially all medical and surgical benefits
22 provided under the plan (or coverage);

23 “(2) such benefits for prosthetics or custom
24 orthotics (or both) under the plan (or coverage) may
25 not be subject to separate financial requirements (as

1 defined in subsection (e)(2)) that are applicable only
2 with respect to such benefits, and any financial re-
3 quirements applicable to such benefits shall be no
4 more restrictive than the financial requirements ap-
5 plicable to substantially all medical and surgical ben-
6 efits provided under the plan (or coverage); and

7 “(3) any treatment limitations (as defined in
8 subsection (e)(3)) applicable to such benefits for
9 prosthetics or custom orthotics (or both) under the
10 plan (or coverage) may not be more restrictive than
11 the treatment limitations applicable to substantially
12 all medical and surgical benefits provided under the
13 plan (or coverage).

14 “(b) IN-NETWORK AND OUT-OF-NETWORK STAND-
15 ARDS.—

16 “(1) IN GENERAL.—In the case of a group
17 health plan (or health insurance coverage offered in
18 connection with a group health plan) that provides
19 medical or surgical benefits and also provides bene-
20 fits for prosthetics or custom orthotics (or both),
21 and that provides both in-network benefits for pros-
22 thetics and custom orthotics and out-of-network ben-
23 efits for prosthetics and custom orthotics, the re-
24 quirements of this section shall apply separately with
25 respect to benefits under the plan (or coverage) on

1 an in-network basis and benefits provided under the
2 plan (or coverage) on an out-of-network basis.

3 “(2) CLARIFICATION.—Nothing in paragraph
4 (1) shall be construed as requiring that a group
5 health plan (or health insurance coverage offered in
6 connection with a group health plan) eliminate an
7 out-of-network provider option from such plan (or
8 coverage) pursuant to the terms of the plan (or cov-
9 erage).

10 “(c) PATIENT ACCESS.—A group health plan (or
11 health insurance coverage offered in connection with a
12 group health plan) described in subsection (a) that does
13 not provide coverage for benefits outside of a network shall
14 ensure that such provider network is adequate to ensure
15 enrollee access to prosthetic and custom orthotic devices
16 and related services provided by appropriately credentialed
17 practitioners and accredited suppliers of prosthetics and
18 custom orthotics.

19 “(d) ADDITIONAL REQUIREMENTS.—

20 “(1) PRIOR AUTHORIZATION.—In the case of a
21 group health plan (or health insurance coverage of-
22 fered in connection with a group health plan) that
23 requires, as a condition of coverage or payment for
24 prosthetics or custom orthotics (or both) under the
25 plan (or coverage), prior authorization, such prior

1 authorization must be required in the same manner
2 as prior authorization is required by the plan (or
3 coverage) as a condition of coverage or payment for
4 all similar medical and surgical benefits provided
5 under the plan (or coverage).

6 “(2) LIMITATION ON MANDATED BENEFITS.—
7 Coverage for required benefits for prosthetics and
8 custom orthotics under this section may be limited
9 to coverage of the most appropriate device or compo-
10 nent model that meets the medical requirements of
11 the patient, as determined by the treating physician
12 of the patient involved.

13 “(3) COVERAGE FOR REPAIR OR REPLACE-
14 MENT.—Benefits for prosthetics and custom
15 orthotics required under this section shall include
16 coverage for the repair or replacement of prosthetics
17 and custom orthotics, if the repair or replacement is
18 due to normal wear and tear, irreparable damage, a
19 change in the condition of the patient as determined
20 by the treating physician, or otherwise determined
21 appropriate by the treating physician of the patient
22 involved.

23 “(4) ANNUAL OR LIFETIME DOLLAR LIMITA-
24 TIONS.—A group health plan (or health insurance
25 coverage offered in connection with a group health

1 plan) shall not impose any annual or lifetime dollar
2 limitation on benefits for prosthetics and custom
3 orthotics required to be covered under this section
4 unless such limitation applies in the aggregate to all
5 medical and surgical benefits provided under the
6 plan (or coverage) and benefits for prosthetics and
7 custom orthotics.

8 “(e) DEFINITIONS.—In this section:

9 “(1) PROSTHETICS.—The term ‘prosthetics’
10 means those devices and components that may be
11 used to replace, in whole or in part, an arm or leg,
12 as well as the services required to do so and includes
13 external breast prostheses incident to mastectomy
14 resulting from breast cancer.

15 “(2) CUSTOM ORTHOTICS.—The term ‘custom
16 orthotics’ means the following:

17 “(A) Custom-fabricated orthotics and re-
18 lated services, which include custom-fabricated
19 devices that are individually made for a specific
20 patient, as well as all services and supplies that
21 are medically necessary for the effective use of
22 the orthotic device and instructing the patient
23 in the use of the device. No other patient would
24 be able to use this particular orthosis. A cus-
25 tom-fabricated orthosis is a device which is fab-

1 ricated based on clinically derived and rectified
2 castings, tracings, measurements, or other im-
3 ages (such as x-rays) of the body part. The fab-
4 rication may involve using calculations, tem-
5 plates and component parts. This process re-
6 quires the use of basic materials and involves
7 substantial work such as vacuum forming, cut-
8 ting, bending, molding, sewing, drilling and fin-
9 ishing prior to fitting on the patient. Custom-
10 fabricated devices may be furnished only by an
11 appropriately credentialed (certified or licensed)
12 practitioner and accredited supplier in Orthotics
13 or Prosthetics. Such devices and related serv-
14 ices are represented by the set of L-codes under
15 the Healthcare Common Procedure Coding Sys-
16 tem describing this care listed on the date of
17 enactment of this section in Centers for Medi-
18 care & Medicaid Services Transmittal 656.

19 “(B) Custom-fitted high orthotics and re-
20 lated services, which include prefabricated de-
21 vices that are manufactured with no specific pa-
22 tient in mind, but that are appropriately sized,
23 adapted, modified, and configured (with the re-
24 quired tools and equipment) to a specific pa-
25 tient in accordance with a prescription, and

1 which no other patient would be able to use, as
2 well as all services and supplies that are medi-
3 cally necessary for the effective use of the
4 orthotic device and instructing the patient in
5 the use of the device. Custom-fitted high devices
6 may be furnished only by an appropriately
7 credentialed (certified or licensed) practitioner
8 and accredited supplier in Orthotics or Pros-
9 thetics. Such devices and related services are
10 represented by the existing set of L-codes under
11 the Healthcare Common Procedure Coding Sys-
12 tem describing this care listed on the date of
13 enactment of this section in Centers for Medi-
14 care & Medicaid Services Transmittal 656.

15 For purposes of subparagraphs (A) and (B), Centers
16 for Medicare & Medicaid Services Transmittal 656,
17 upon modification or reissuance by the Centers for
18 Medicare & Medicaid Services to reflect new code ad-
19 ditions and coding changes for prosthetics and cus-
20 tom orthotics, shall be the version of the Transmittal
21 used for purposes of such subparagraphs.

22 “(3) FINANCIAL REQUIREMENTS.—The term
23 ‘financial requirements’ includes deductibles, coin-
24 surance, co-payments, other cost sharing, and limita-
25 tions on the total amount that may be paid by a

1 participant or beneficiary with respect to benefits
2 under the plan or health insurance coverage and also
3 includes the application of annual and lifetime lim-
4 its.

5 “(4) TREATMENT LIMITATIONS.—The term
6 ‘treatment limitations’ includes limits on the fre-
7 quency of treatment, number of visits, days of cov-
8 erage, or other similar limits on the scope or dura-
9 tion of treatment.

10 “(f) DIFFERENTIATION FROM DURABLE MEDICAL
11 EQUIPMENT.—For purposes of this section, prosthetics
12 and custom orthotics shall be treated as distinct from du-
13 rable medical equipment.”.

14 (2) CLERICAL AMENDMENT.—The table of con-
15 tents in section 1 of the Employee Retirement In-
16 come Security Act of 1974 is amended by inserting
17 after the item relating to section 714 the following:

“Sec. 716. Prosthetics and custom orthotics parity.”.

18 (b) PHSA.—Title XXVII of the Public Health Serv-
19 ice Act is amended by inserting after section 2728 of such
20 Act (42 U.S.C. 300gg–28), as redesignated by section
21 1001(2) of the Patient Protection and Affordable Care Act
22 (Public Law 111–148), the following:

1 **“SEC. 2729. PROSTHETICS AND CUSTOM ORTHOTICS PAR-**
2 **ITY.**

3 “(a) IN GENERAL.—In the case of a group health
4 plan (or health insurance coverage offered in connection
5 with a group health plan) that provides medical and sur-
6 gical benefits and also provides benefits for prosthetics or
7 custom orthotics (as defined under paragraphs (1) and (2)
8 of subsection (e)) (or both)—

9 “(1) such benefits for prosthetics or custom
10 orthotics (or both) under the plan (or coverage) shall
11 be provided under terms and conditions that are no
12 less favorable than the terms and conditions applica-
13 ble to substantially all medical and surgical benefits
14 provided under the plan (or coverage);

15 “(2) such benefits for prosthetics or custom
16 orthotics (or both) under the plan (or coverage) may
17 not be subject to separate financial requirements (as
18 defined in subsection (e)(2)) that are applicable only
19 with respect to such benefits, and any financial re-
20 quirements applicable to such benefits shall be no
21 more restrictive than the financial requirements ap-
22 plicable to substantially all medical and surgical ben-
23 efits provided under the plan (or coverage); and

24 “(3) any treatment limitations (as defined in
25 subsection (e)(3)) applicable to such benefits for
26 prosthetics or custom orthotics (or both) under the

1 plan (or coverage) may not be more restrictive than
2 the treatment limitations applicable to substantially
3 all medical and surgical benefits provided under the
4 plan (or coverage).

5 “(b) IN-NETWORK AND OUT-OF-NETWORK STAND-
6 ARDS.—

7 “(1) IN GENERAL.—In the case of a group
8 health plan (or health insurance coverage offered in
9 connection with a group health plan) that provides
10 medical and surgical benefits and also provides bene-
11 fits for prosthetics or custom orthotics (or both),
12 and that provides both in-network and out-of-net-
13 work benefits for prosthetics or custom orthotics (or
14 both), the requirements of this section shall apply
15 separately with respect to benefits under the plan
16 (or coverage) on an in-network basis and benefits
17 provided under the plan (or coverage) on an out-of-
18 network basis.

19 “(2) CLARIFICATION.—Nothing in paragraph
20 (1) shall be construed as requiring that a group
21 health plan (or health insurance coverage offered in
22 connection with a group health plan) eliminate an
23 out-of-network provider option from such plan (or
24 coverage) pursuant to the terms of the plan (or cov-
25 erage).

1 “(c) PATIENT ACCESS.—A group health plan (or
2 health insurance coverage offered in connection with a
3 group health plan) described in subsection (a) that does
4 not provide coverage for benefits outside of a network shall
5 ensure that such provider network is adequate to ensure
6 enrollee access to prosthetic and custom orthotic devices
7 and related services provided by appropriately credentialed
8 practitioners and accredited suppliers of prosthetics and
9 custom orthotics.

10 “(d) ADDITIONAL REQUIREMENTS.—

11 “(1) PRIOR AUTHORIZATION.—In the case of a
12 group health plan (or health insurance coverage of-
13 fered in connection with a group health plan) that
14 requires, as a condition of coverage or payment for
15 prosthetics or custom orthotics (or both) under the
16 plan (or coverage), prior authorization, such prior
17 authorization must be required in the same manner
18 as prior authorization is required by the plan (or
19 coverage) as a condition of coverage or payment for
20 all similar medical and surgical benefits provided
21 under the plan (or coverage).

22 “(2) LIMITATION ON MANDATED BENEFITS.—
23 Coverage for required benefits for prosthetics and
24 custom orthotics under this section may be limited
25 to coverage of the most appropriate device or compo-

1 nent model that adequately meets the medical re-
2 quirements of the patient, as determined by the
3 treating physician of the patient involved.

4 “(3) COVERAGE FOR REPAIR OR REPLACE-
5 MENT.—Benefits for prosthetics and custom
6 orthotics required under this section shall include
7 coverage for the repair or replacement of prosthetics
8 and custom orthotics, if the repair or replacement is
9 due to normal wear and tear, irreparable damage, a
10 change in the condition of the patient as determined
11 by the treating physician, or otherwise determined
12 appropriate by the treating physician of the patient
13 involved.

14 “(4) ANNUAL OR LIFETIME DOLLAR LIMITA-
15 TIONS.—A group health plan (or health insurance
16 coverage offered in connection with a group health
17 plan) shall not impose any annual or lifetime dollar
18 limitation on benefits for prosthetics and custom
19 orthotics required to be covered under this section
20 unless such limitation applies in the aggregate to all
21 medical and surgical benefits provided under the
22 plan (or coverage) and benefits for prosthetics and
23 custom orthotics.

24 “(e) DEFINITIONS.—In this section:

1 “(1) PROSTHETICS.—The term ‘prosthetics’
2 means those devices and components that may be
3 used to replace, in whole or in part, an arm or leg,
4 as well as the services required to do so and includes
5 external breast prostheses incident to mastectomy
6 resulting from breast cancer.

7 “(2) CUSTOM ORTHOTICS.—The term ‘custom
8 orthotics’ means the following:

9 “(A) Custom-fabricated orthotics and re-
10 lated services, which include custom-fabricated
11 devices that are individually made for a specific
12 patient, as well as all services and supplies that
13 are medically necessary for the effective use of
14 the orthotic device and instructing the patient
15 in the use of the device. No other patient would
16 be able to use this particular orthosis. A cus-
17 tom-fabricated orthosis is a device which is fab-
18 ricated based on clinically derived and rectified
19 castings, tracings, measurements, or other im-
20 ages (such as x-rays) of the body part. The fab-
21 rication may involve using calculations, tem-
22 plates and component parts. This process re-
23 quires the use of basic materials and involves
24 substantial work such as vacuum forming, cut-
25 ting, bending, molding, sewing, drilling and fin-

1 ishing prior to fitting on the patient. Custom-
2 fabricated devices may be furnished only by an
3 appropriately credentialed (certified or licensed)
4 practitioner and accredited supplier in Orthotics
5 or Prosthetics. Such devices and related serv-
6 ices are represented by the set of L-codes under
7 the Healthcare Common Procedure Coding Sys-
8 tem describing this care listed on the date of
9 enactment of this section in Centers for Medi-
10 care & Medicaid Services Transmittal 656.

11 “(B) Custom-fitted high orthotics and re-
12 lated services, which include prefabricated de-
13 vices that are manufactured with no specific pa-
14 tient in mind, but that are appropriately sized,
15 adapted, modified, and configured (with the re-
16 quired tools and equipment) to a specific pa-
17 tient in accordance with a prescription, and
18 which no other patient would be able to use, as
19 well as all services and supplies that are medi-
20 cally necessary for the effective use of the
21 orthotic device and instructing the patient in
22 the use of the device. Custom-fitted high devices
23 may be furnished only by an appropriately
24 credentialed (certified or licensed) practitioner
25 and accredited supplier in Orthotics or Pros-

1 thetics. Such devices and related services are
2 represented by the existing set of L-codes under
3 the Healthcare Common Procedure Coding Sys-
4 tem describing this care listed on the date of
5 enactment of this section in Centers for Medi-
6 care & Medicaid Services Transmittal 656.

7 For purposes of subparagraphs (A) and (B), Centers
8 for Medicare & Medicaid Services Transmittal 656,
9 upon modification or reissuance by the Centers for
10 Medicare & Medicaid Services to reflect new code ad-
11 ditions and coding changes for prosthetics and cus-
12 tom orthotics, shall be the version of the Transmittal
13 used for purposes of such subparagraphs.

14 “(3) FINANCIAL REQUIREMENTS.—The term
15 ‘financial requirements’ includes deductibles, coin-
16 surance, co-payments, other cost sharing, and limita-
17 tions on the total amount that may be paid by a
18 participant or beneficiary with respect to benefits
19 under the plan or health insurance coverage and also
20 includes the application of annual and lifetime lim-
21 its.

22 “(4) TREATMENT LIMITATIONS.—The term
23 ‘treatment limitations’ includes limits on the fre-
24 quency of treatment, number of visits, days of cov-

1 erage, or other similar limits on the scope or dura-
 2 tion of treatment.

3 “(f) DIFFERENTIATION FROM DURABLE MEDICAL
 4 EQUIPMENT.—For purposes of this section, prosthetics
 5 and custom orthotics shall be treated as distinct from du-
 6 rable medical equipment.”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply with respect to group health plans
 9 (and health insurance coverage offered in connection with
 10 group health plans) for plan years beginning on or after
 11 the date of the enactment of this Act.

12 **SEC. 4. UPDATING STANDARD DEFINITIONS TO INCLUDE**
 13 **PROSTHETICS AND CUSTOM ORTHOTICS.**

14 Section 2715(g)(3) of the Public Health Service Act
 15 (42 U.S.C. 300gg–15(g)(3)) is amended by inserting
 16 “prosthetics, custom orthotics,” after “emergency medical
 17 transportation,”.

18 **SEC. 5. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

19 (a) ASSISTANCE TO ENROLLEES.—The Secretary of
 20 Labor, in consultation with the Secretary of Health and
 21 Human Services, shall provide assistance to enrollees
 22 under group health plans (and health insurance coverage
 23 offered in connection with such plans) to which the amend-
 24 ment made by section 3 apply with any questions or prob-

1 lems with respect to compliance with the requirements of
2 such amendment.

3 (b) AUDITS.—The Secretary of Labor, in consulta-
4 tion with the Secretary of Health and Human Services,
5 shall provide for the conduct of random audits of group
6 health plans (and health insurance coverage offered in
7 connection with such plans) to ensure that such plans (or
8 coverage) are in compliance with the amendments made
9 by section (3).

10 (c) GAO STUDY.—

11 (1) STUDY.—The Comptroller General of the
12 United States shall conduct a study that evaluates
13 the effect of the implementation of the amendments
14 made by this Act on the cost of the health insurance
15 coverage, on access to health insurance coverage (in-
16 cluding the availability of in-network providers), on
17 the quality of health care, on benefits and coverage
18 for prosthetics and custom orthotics on any addi-
19 tional cost or savings to group health plans, on State
20 prosthetics and custom orthotics benefit laws, on the
21 business community and the Federal Government,
22 and on other issues as determined appropriate by
23 the Comptroller General.

24 (2) REPORT.—Not later than 2 years after the
25 date of the enactment of this Act, the Comptroller

1 General of the United States shall prepare and sub-
2 mit to the appropriate committee of Congress a re-
3 port containing the results of the study conducted
4 under paragraph (1).

5 (d) REGULATIONS.—Not later than 1 year after the
6 date of the enactment of this Act, the Secretary of Labor,
7 in consultation with the Secretary of Health and Human
8 Services, shall promulgate final regulations to carry out
9 this Act and the amendments made by this Act.

10 **SEC. 6. DEFINITIONS.**

11 In this Act:

12 (1) CUSTOM ORTHOTICS AND PROSTHETICS.—
13 The terms “custom orthotics” and “prosthetics”
14 have the meanings given such terms in section
15 716(e) of the Employee Retirement and Income Se-
16 curity Act of 1974 (as added by section 3).

17 (2) GROUP HEALTH PLAN.—The term “group
18 health plan” has the meaning given such term in
19 section 733(a) of such Act (29 U.S.C. 1191b(a)).

20 (3) HEALTH INSURANCE COVERAGE.—The term
21 “health insurance coverage” has the meaning given
22 such term in section 733(b)(1) of such Act (29
23 U.S.C. 1191b(b)(1)).

○